

Period of Time For Challenging FOIA Denial Begins the Date the Denial is Mailed

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Under Michigan's FOIA statute, a lawsuit challenging the denial of a FOIA request must be filed within 180 days. In a February 15, 2011 decision in *Prins v. Michigan State Police*, Case No. 293251, the Court of Appeals held that the 180 day period starts from the date the public body places the denial letter in the mail, **not** the date that the denial letter was written.

In *Prins*, the Michigan State Police (the MSP) issued a citation for failure to wear a seat belt to a passenger in a car. The driver issued a FOIA request seeking a copy of any recordings taken by the State Trooper during the pertinent period of time. In a letter dated July 26, 2008 the request was denied – saying the car video was no longer available. The envelope bore a postmark of July 29, 2008. The passenger appeared at a hearing several months later to contest the citation and the prosecutor produced video depicting the traffic stop. The driver then filed a lawsuit claiming violation of FOIA. The MSP argued that the lawsuit was untimely because the letter was dated July 26; the driver-plaintiff argued that it was the mailing that triggered the 180 day time limit, and her complaint was timely. The Court of Appeals agreed with the driver-plaintiff and found her complaint timely because FOIA “commands that a public body respond to a request for public records either by granting it, or by ‘[i]ssuing a written notice to the requesting person denying the request.’ MCL 15.235(2) (b) (emphasis added). The Court held that “issue” meant to “to let out; discharge[;]... to publish; put forth and circulate; give out publically or officially.”

As a result, the Court found that a public body has not satisfied the statute's notice requirement until it “sends out” or officially circulates its denial of a public record request; this prevents a public body's failure to timely mail a denial letter from unduly shortening the 180-day period of limitation.

Update: On January 25, 2012, the Michigan Supreme Court denied leave to appeal the Court of Appeals decision, leaving the Court of Appeals decision intact.

If you have questions about these issues or any other FOIA/OMA issues, please contact a member of the Butzel Media Team:

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